

1986

## F. Grant Cook v. Carol L. Cook : Reply Brief

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jack H. Molgard; attorney for appellee.

Dale F. Gardiner; attorney for appellant.

---

### Recommended Citation

Reply Brief, *F. Grant Cook v. Carol L. Cook*, No. 860056.00 (Utah Supreme Court, 1986).

[https://digitalcommons.law.byu.edu/byu\\_sc1/747](https://digitalcommons.law.byu.edu/byu_sc1/747)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

U. S. DEPARTMENT  
OF JUSTICE  
K. F. U.  
50

DOCKET NO. 860056

~~IN THE SUPREME~~ COURT OF THE STATE OF UTAH

CAROL L. COOK,  
Defendant/Appellee.

860056-CA  
Case No. 20165

## REPLY BRIEF OF APPELLANT

Appeal from the Order of the First Judicial District in and  
for Box Elder County, State of Utah, the HONORABLE VENNY  
CHRISTOFFERSEN, District Judge

JACK H. MOLGARD  
Attorney for Appellee  
102 South 100 West  
P.O. Box 461  
Brigham City, Utah 84302

DALE F. GARDINER  
Attorney for Appellant  
1325 South Main Street, Suite 201  
Salt Lake City, Utah 84115

FILED

FEB 25 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---

F. GRANT COOK,	)	
	)	
Plaintiff/Appellant,	)	Case No. 20165
	)	
vs.	)	
	)	
CAROL L. COOK,	)	
	)	
Defendant/Appellee.	)	

---

---

REPLY BRIEF OF APPELLANT

---

Appeal from the Order of the First Judicial District in and  
for Box Elder County, State of Utah, the HONORABLE VENOY  
CHRISTOFFERSEN, District Judge

JACK H. MOLGARD  
Attorney for Appellee  
102 South 100 West  
P.O. Box 461  
Brigham City, Utah 84302

DALE F. GARDINER  
Attorney for Appellant  
1325 South Main Street, Suite 201  
Salt Lake City, Utah 84115

## TABLE OF CONTENTS

	<u>Page</u>
POINT I: THE DIVISION OF THE PROPERTY IMPOSED BY THE LOWER COURT . . . . .	1
POINT II: THE LOWER COURT FAILED TO MAKE APPROPRIATE FINDINGS AS TO THE VALUE OF THE PARTIES' PROPERTY . . . . .	2
POINT III: THE LOWER COURT MODIFIED THE DECREE WITHOUT AN APPROPRIATE HEARING OR EVIDENCE . . . . .	4
ADDENDUM . . . . .	6

TABLE OF AUTHORITIES

	Page(s)
<u>Johnson v. Johnson</u> , 152 P.2d 426 (Utah 1944) . . .	2
<u>Fletcher v. Fletcher</u> , 615 P.2d 1218 (Utah 1980) . . . . .	2
<u>Turner v. Turner</u> , 649 P.2d 6 (Utah 1982) . . . . .	2

Statutes

Utah Code Ann. Section 30-3-4 (1953, as amended) . . . . .	2
---	---

POINT I

THE DIVISION OF THE PROPERTY IMPOSED  
BY THE LOWER COURT IS INEQUITABLE.

As explained on page 6 of appellant's brief, prior to the decision of Judge Christoffersen, Grant Cook had a reasonable expectation of receiving approximately \$148,000.00. Appellee's reply is that the Court should disregard the mean values used in appellant's brief. For the purposes of appellant's calculations, appellant used the value of \$175,000.00 for the trailer park, the same value imposed by the lower court, when it approved the sale of the trailer court to the defendant. In summary, prior to the imposed sale, plaintiff had a reasonable expectation of receiving \$148,000.00 cash. After the sale, plaintiff received only \$44,711.33 plus some equipment. The question then remains, how did that occur? First, while the memorandum decision and supplemental divorce decree required the "obligations of the parties to be discharged" Judge Christoffersen in approving the accounting of the receiver imposed upon the plaintiff the following obligations: Jerry West, \$1,313.56; Doug Kelly, \$751.78; State Tax Commission, \$2,907.05. (R. 265).

Second, the Court required plaintiff to accept a large credit for certain equipment, despite the fact that the plaintiff had notified the receiver that he would not accept equipment as payment for the trailer park. (R. 222; also, see tr. p. 34.)

By approving ex parte the offer of the defendant to purchase the trailer park and imposing upon the defendant the obligation to accept equipment and to pay certain obligations, plaintiff received, instead of \$148,000.00, only \$44,711.33 plus some equipment.

## POINT II

### THE LOWER COURT FAILED TO MAKE APPROPRIATE FINDINGS AS TO THE VALUE OF THE PARTIES' PROPERTY.

Utah Code Annotated Section 33-3-4 requires the lower court in all divorce cases to make and file its findings and decree upon the evidence. The findings must be specific. Johnson v. Johnson, 152 P.2d 426 (Utah 1944). Ordinarily, after trial, the Court values the assets and real estate according to the existing property interests at the time the marriage is terminated. Turner v. Turner, 649 P.2d 6 (Utah 1982); Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980). Contrary to the foregoing authority, the lower court did not make findings as to the value of the parties' assets. When it entered the original divorce decree on or about May 11, 1983, the Court declined to make any findings as to the value of the parties' assets and instead noted "The Court takes under advisement the issue of property and asset distribution or sale." (R. 68). The Court thereafter issued a memorandum decision wherein it outlined the values placed upon the assets by the different parties. For example,

the Court noted that the plaintiff testified that the value of the trailer court was \$225,000.00, and the defendant testified that the value was \$125,000.00. The parties also disagreed as to the value of any equipment. Thereafter, on or about September 21, 1983, the Court made supplemental findings of fact and conclusions of law and a supplemental decree. Once again, however, the Court failed to value the assets of the parties and simply noted that one party had valued the trailer court at \$125,000.00 and the other party at \$225,000.00. The Court also noted that one party had valued the construction equipment at \$76,000.00, and the other party had valued it at \$165,000.00. The Court once again failed to make any specific findings regarding value.

Thus, at the time the defendant presented her ex parte offer to the Court for the trailer park, the Court had not made any specific findings as to the value of the parties' assets. In an ex parte fashion, without the benefit of evidence or a hearing, the Court, by approving the earnest money offer and receipt, imposed upon the parties its own arbitrary set of values, that is, the values contained in the earnest money offer submitted by the defendant.

In summary, instead of the lower court making findings and disposing of the property, the lower court, in effect, decided on its own to dispose of the property and then worry about the findings later. Such a course of conduct is clearly reversible error.



### POINT III

#### THE LOWER COURT MODIFIED THE DECREE WITHOUT AN APPROPRIATE HEARING OR RECEIVING APPROPRIATE EVIDENCE.

Prior to the Court approving the earnest money offer of the defendant, the master appointed by the Court was authorized to accept proposals on the trailer park with terms to be not less than 15 percent down and payable over ten years. He was authorized to receive proposals for construction equipment of up to 25 percent down and the balance paid over three years (R. 71). The sales proceeds were to be distributed as follows: First, commissions were to be paid; second, the obligations of the parties were to be discharged; third, 70 percent of the proceeds were to go to the plaintiff and 30 percent of the proceeds were to go to the defendant until the plaintiff had received \$35,000.00 more than the defendant, at which time the proceeds were to be distributed on an equal basis. The plaintiff was to be awarded the additional \$35,000.00 as compensation for his inheritance and to offset the award of the parties' mobile home to the defendant. However, after Judge Christoffersen approved the earnest money offer submitted by the defendant and clarified the memorandum decision at a subsequent hearing, the divorce decree was changed substantially in the following respects: First, the plaintiff did not receive 70 percent of the proceeds until he had received \$35,000.00

more than the defendant. Rather, the Court imposed its own terms of sale and imposed upon the plaintiff the obligation to take the equipment and to pay for certain other credits. The Court did this without making a finding that a substantial change in circumstances had occurred since the entry of the divorce decree.

For these reasons, the decision of the lower court in approving the accounting of the receiver and sale of the property to the defendant should be set aside and the case should be remanded with instructions to the lower court to order a distribution of the parties' property pursuant to the terms of the lower court's decree and memorandum decision, and with instructions to make appropriate findings as to the value of the parties' assets.

Respectfully submitted this 2<sup>nd</sup> day of Feb

\_\_\_\_\_, 1985.



\_\_\_\_\_  
DALE F. GARDINER  
Attorney for Plaintiff  
1325 South Main, Suite 201  
Salt Lake City, Utah 84115  
Telephone: 486-4607

## ADDENDUM

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

IN THE DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

-----

F. GRANT COOK,	)	
	)	<u>FINDINGS OF FACT</u>
Plaintiff,	)	<u>AND</u>
	)	<u>CONCLUSIONS OF LAW</u>
vs.	)	
CAROL L. COOK,	)	
	)	Civil No. 17201
Defendant.	)	

-----

This cause having come on regularly for trial on the 21st day of March, 1983, before the Honorable OMER J. CALL, District Judge presiding, of the above-entitled Court, without a jury, and the Plaintiff appearing in person and by his attorney, DALE M. DORIUS, and the Defendant having appeared in person and by her attorney, H. DON SHARP, and the parties having testified, and the Court being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. That Plaintiff is a bona fide and actual resident of Box Elder County, Utah, and has been such for more than three (3) months immediately preceding the commencement of this action.
2. That Defendant is a bona fide and actual resident of Box Elder County, Utah and has been such for more than three (3) months immediately preceding the commencement of this action.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

-2-

3. That Plaintiff and Defendant were married on October 18, 1950, at Box Elder County, Brigham City, Utah, and are now husband and wife.

4. That four (4) children have been born as issue of said marriage, and all are now imancipated.

5. That during the last months immediately preceding the filing of this action Defendant has treated the Plaintiff cruelly and has caused him mental stress and physical distress, and the Plaintiff has treated the Defendant cruelly and has caused her mental stress and physical distress, to the extent that the legitimate objects of the marriage have been destroyed. That Plaintiff and Defendant have failed in all attempts to reconcile, and therefore, the court waives any further statutory periods. That Plaintiff and Defendant are each awarded a divorce on Plaintiff's Complaint herein and the divorce is to become final upon entry.

6. That the Court takes under advisement the issue of property and asset distribution.

7. The Court further continues the temporary orders entered in the above case until the property divisions or sales are ordere

From the foregoing Findings of Fact, the Court makes the following:

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219


-3-

CONCLUSIONS OF LAW

1. That the Court takes under advisement the issues of property and asset distribution.
2. That the Court further continues the temporary orders entered in the above case until the property divisions or sales are ordered.


DATED this 11 day of <sup>May</sup>~~April~~, 1983.

BY THE COURT:

  
OMER J. CALL  
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing document to the Defendant's attorney, H. DON SHARP, at Legal Forum Building, 2447 Kiesel Avenue, Ogden, Utah 84401, this 7th day of April, 1983.

  
DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main Street  
P. O. Box "U"  
Brigham City, Utah 84302

All of the rest, residue and remainder of the property not herein before disposed of shall be sold and the proceeds distributed in accordance with the following:

a. Gary Bywater of Brigham Realty will, 30 days after date of this Memorandum Decision be appointed by the court at a commission of not to exceed six percent to sell all of such property for cash or on terms of not less than fifteen per cent down and the remaining balance amortized over a ten year period as to real property, and twenty-five percent down and the balance amortized in not less than three years as to personal property with interest on unpaid balances at a rate not less than ten percent per annum. From the proceeds of such sale the said Bywater shall pay his commission in full if such sales are for cash, if not for cash then one-half of the earned commission shall be paid on completion of the sales and one-half shall be paid one year thereafter.

b. Obligations of the parties on the subject property (less any assumed by the buyers) shall be discharged, including obligations owed as of March 1, 1983, to Flying J. Oil, Internal Revenue Service and to Dr. Hale.

c. Thirty percent of the principal and interest of the remaining proceeds shall be delivered to the defendant and seventy percent of such principal and interest of such proceeds delivered to the plaintiff until such time as plaintiff shall have received \$35,000.00 more in principal than defendant has received in principal from such proceeds, (this to compensate plaintiff for the value of the trailer home, the stock, the piano, the retirement plan of defendant and the plaintiff's inherited property invested in the trailer court and construction business of the parties). Thereafter all remaining proceeds together with interest shall be disbursed one-half to plaintiff and one-half to defendant.

The parties hereto are allowed the 30 days from date of this Memorandum Decision to, by their mutual agreement:

a. Appoint a real estate broker or sales agent of their own choosing to act in place of Gary Bywater in selling and distributing said property.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

IN THE DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

---

F. GRANT COOK,	)	<u>SUPPLEMENTAL</u>
	)	<u>FINDINGS OF FACT</u>
Plaintiff,	)	<u>AND</u>
	)	<u>CONCLUSIONS OF LAW</u>
vs.	)	
CAROL L. COOK,	)	
	)	Civil No. 17201
Defendant,	)	

---

        This cause having come on regularly for trial on the 21st day of March, 1983, before the Honorable OMER J. CALL, District Judge presiding, of the above-entitled Court, without a jury, and the plaintiff appearing in person and by his attorney, DALE M. DORIUS, and the Defendant having appeared in person and by her attorney, H. DON SHARP, and the parties having testified, and the Court being fully advised in the premises, and having made and entered its Findings of Fact and Conclusions of Law and Decree herein; and the Court having taken under advisement the property and asset distribution, and the temporary order regarding the operation of the trailer by the Defendant herein being continued in effect, now makes the following:



DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 2 -

FINDINGS OF FACT

1. The court finds the following property to have been accumulated by the parties during the marriage:

a. A Trailer Court at Willard, Utah consisting of approximately nine acres in four more or less contiguous tracts, valued by one of the parties at \$125,000.00 and by the other party at \$225,000.00. This property is subject to two mortgages and a tax lien totaling approximately \$50,000.00.

b. Construction equipment, including three diesel dump trucks, two gasoline dump trucks, one diesel dump truck (motor out), one diesel backhoe, one diesel roller, one air compressor, two pump tractors, one rock jaw, one 1976 Ford Service Truck, one 1968 Ford Bronco, one Lincoln Welder, one 1976 John Deere Loader, parts and tools. This property valued by one of the parties at \$76,000.00 and by the other party at \$165,000.00. The obligations owing on this property forms part of the mortgage obligations owing on the Trailer Park.

c. Kit Trailer Home, the present residence of the defendant herein, valued by the parties at \$18,000.00 and \$23,000.00 and subject to an unpaid balance owing thereon of \$3,500.00.

DALE M. DORIUS  
Attorney for: plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 3 -

d. Four Trailers valued by the parties at between \$500.00 and \$1,000.00 each; three Sedan Automobiles standing in the name of defendant with obligations owing thereon at close to the value of the vehicles.

e. Stocks or Securities Account with Kidder Peabody standing in defendant's name, \$7,800.00.

f. Bank Account, \$4,500.00.

g. Defendant's Retirement Account, \$1,500.00.

h. Piano, \$900.00.

i. Defendant has recently inherited from her parents \$15,000.00 which she retains in her separate name.

j. Bearing upon all of the foregoing property is the claim by plaintiff that he inherited from his parents \$17,000.00, all of which he has put into either the Trailer Court or the Bayside construction businesses. Further the defendant claims she loaned plaintiff \$5,000.00 from her retirement fund which was put into the Bayside Construction Company and only \$1,000.00 repaid by plaintiff.

2. Because of the involvement of the Trailer Court tracts with culinary water systems, sewage disposal systems, electrical power

DALE M. DORIUS  
Attorney for:  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 4 -

systems, ingress and egress and because of the wide divergence in the values placed, not only upon the Trailer Court but also upon the Bayside Construction Equipment as well, and the obligations owing on the Trailer Park and the Construction Equipment being combined, the court finds it impractical, if not impossible, to divide or distribute the parties' assets in kind. The court therefore concludes and directs that:

a. The \$4,500.00 Bank Account be divided one-half to each party.

b. The defendant to retain the balance of her retirement account, half of the pictures, albums, personal memorabilia and papers, the three sedan automobiles standing in her name, the piano and the stock or securities account with Kidder Peabody and the Kit Trailer Home presently occupied by the defendant, all subject to the obligation owing thereon, which the defendant shall assume and pay and save the plaintiff harmless thereon.

c. That the plaintiff shall have and receive in his separate name the 1968 Ford Bronco, the Pickup Truck, one-half of the pictures, albums, personal memorabilia and papers, and his choice of any one of the four remaining trailers owned by the parties.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 5 -

3. All of the rest, residue and remainder of the property not herein before disposed of shall be sold and the proceeds distributed in accordance with the following:

a. Gary Bywater of Brigham Realty will, 30 days after date of the Memorandum Decision, May 27, 1983, be appointed by the court at a commission of not to exceed six percent to sell all of such property for cash or on terms of not less than fifteen percent down and the remaining balance amortized over a ten year period as to real property, and twenty-five percent down and the balance amortized in not less than three years as to personal property with interest on unpaid balances at a rate not less than ten percent per annum. From the proceeds of such sale the said Bywater shall pay his commission in full if such sales are for cash, if not for cash then one-half of the earned commission shall be paid on completion of the sales and one-half shall be paid one year thereafter.

b. Obligations of the parties on the subject property (less any assumed by the buyers) shall be discharged, including obligations owed as of March 1, 1983, to Flying J. Oil, Internal Revenue Service and to Dr. Hale.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 6 -

c. Thirty percent of the principal and interest of the remaining proceeds shall be delivered to the defendant and seventy percent of such principal and interest of such proceeds delivered to the plaintiff until such time as plaintiff shall have received \$35,000.00 more in principal than defendant has received in principal from such proceeds, (this to compensate plaintiff for the value of the trailer home, the stock, the piano, the retirement plan of defendant and the plaintiff's inherited property invested in the trailer court and construction business of the parties). Thereafter all remaining proceeds together with interest shall be disbursed one-half to plaintiff and one-half to defendant.

4. The parties hereto are allowed the 30 days from date of the Memorandum Decision, May 27, 1983, to, by their mutual agreement:

a. Appoint a real estate broker or sales agent of their own choosing to act in place of Gary Bywater in selling and distributing said property.

b. To agree to the purchase by either party of any part or all of the assets under the guidelines suggested above by the court or such other terms as the parties can mutually agree upon.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 7 -

c. Division in kind of all such remaining assets.

5. Each party to bear his own costs and attorneys fees herein.

6. The prior temporary order of the court regarding management and operation of the trailer court to remain in effect only until 30 days after the date of the Memorandum Decision, May 27, 1983.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The \$4,500.00 Bank Account be divided one-half to each party.

2. The defendant to retain the balance of her retirement account, half of the pictures, albums, personal memorabilia and papers, the three sedan automobiles standing in her name, the piano and the stock or securities account with Kidder Peabody and the Kit Trailer Home presently occupied by the defendant, all subject to the obligations owing thereon, which the defendant shall assume and pay and save the plaintiff harmless thereon.

3. That the plaintiff shall have and receive in his separate name the 1968 Ford Bronco, the Pickup Truck, one-half of the pictures, albums, personal memorabilia and papers, and his choice of any one of the four remaining trailers owned by the parties.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 8 -

4. All of the rest, residue and remainder of the property not herein before disposed of shall be sold and the proceeds distributed in accordance with the following:

a. Gary Bywater of Brigham Realty will, 30 days after date of the Memorandum Decision, May 27, 1983, be appointed by the court at a commission of not to exceed six percent to sell all of such property for cash or on terms of not less than fifteen percent down and the remaining balance amortized over a ten year period as to real property, and twenty-five percent down and the balance amortized in not less than three years as to personal property with interest on unpaid balances at a rate not less than ten percent per annum. From the proceeds of such sale the said Bywater shall pay his commission in full if such sales are for cash, if not for cash then one-half of the earned commission shall be paid on completion of the sales and one-half shall be paid one year thereafter.

b. Obligations of the parties on the subject property (less any assumed by the buyers) shall be discharged, including obligations owed as of March 1, 1983, to Flying J. Oil, Internal Revenue Service and to Dr. Hale.

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 9 -

c. Thirty percent of the principal and interest of the remaining proceeds shall be delivered to the defendant and seventy percent of such principal and interest of such proceeds delivered to the plaintiff until such time as plaintiff shall have received \$35,000.00 more in principal than defendant has received in principal from such proceeds, (this to compensate plaintiff for the value of the trailer home, the stock, the piano, the retirement plan of defendant and the plaintiff's inherited property invested in the trailer court and construction business of the parties). Thereafter all remaining proceeds together with interest shall be disbursed one-half to plaintiff and one-half to defendant.

5. The parties hereto are allowed the 30 days from date of the Memorandum Decision, May 27, 1983, to, by their mutual agreement:

a. Appoint a real estate broker or sales agent of their own choosing to act in place of Gary Bywater in selling and distributing said property.

b. To agree to the purchase by either party of any part or all of the assets under the guidelines suggested above by the court or such other terms as the parties can mutually agree upon.

c. Division in kind of all such remaining assets.



DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

IN THE DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

-----

F. GRANT COOK,	)	<u>SUPPLEMENTAL</u>
	)	<u>DECREE</u>
Plaintiff,	)	
vs.	)	
	)	Civil No. 17201
CAROL L. COOK,	)	
	)	
Defendant,	)	

-----

This cause having come on regularly for trial on the 21st day of March, 1983, before the Honorable OMER J. CALL, District Judge presiding, of the above-entitled Court, without a jury, and the Plaintiff appearing in person and by his attorney, DALE M. DORIUS, and the Defendant having appeared in person and by her attorney, H. DON SHARP, and the parties having testified, and the Court being fully advised in the premises, and having made and entered its Findings of Fact and Conclusions of Law and Decree herein; and the Court having taken under advisement the property and asset distribution and the temporary order regarding the operation of the trailer by the Defendant herein being continued in effect, and the Court having

Number 17201

FILED SEP 21 1983

By H. Don Sharp

MICROFILMED

Date 8/3 Roll No 325

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 2 -

made and entered its Supplemental Findings of Fact and Conclusions of Law herein; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. It is ordered that the \$4,500.00 Bank Account be divided one-half to each party.
2. The Defendant is awarded the balance of her retirement account, half of the pictures, albums, personal memorabilia and papers, the three sedan automobiles standing in her name, the piano and the stock or securities account with Kidder Peabody and the Kit Trailer Home presently occupied by the Defendant, all subject to the obligations owing thereon, which the Defendant shall assume and pay and save the Plaintiff harmless thereon.
3. The Plaintiff is awarded in his separate name the 1968 Ford Bronco, the pickup Truck, one-half of the pictures, albums, personal memorabilia and papers, and his choice of any one of the four remaining trailers owned by the parties.
4. It is ordered that all of the rest, residue and remainder of the property not herein before disposed of shall be sold and the proceeds distributed in accordance with the following:

DALE M. DORIUS  
Attorney for: Plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 3 -

a. Gary Bywater of Brigham Realty will, 30 days after date of the Memorandum Decision, May 27, 1983, be appointed by the court at a commission of not to exceed six percent to sell all of such property for cash or on terms of not less than fifteen percent down and the remaining balance amortized over a ten year period as to real property, and twenty-five percent down and the balance amortized in not less than three years as to personal property with interest on unpaid balances at a rate not less than ten percent per annum. From the proceeds of such sale the said Bywater shall pay his commission in full if such sales are for cash, if not for cash then one-half of the earned commission shall be paid on completion of the sales and one-half shall be paid one year thereafter.

b. Obligations of the parties on the subject property (less any assumed by the buyers) shall be discharged, including obligations owed as of March 1, 1983, to Flying J. Oil, Internal Revenue Service and to Dr. Hale.

c. Thirty percent of the principal and interest of the remaining proceeds shall be delivered to the Defendant and seventy percent of such principal and interest of such proceeds delivered to the Plaintiff until such time as Plaintiff shall have received \$35,000.00 more in principal than Defendant has received in principal from such proceeds.

DALE M. DORIUS  
Attorney for: plaintiff  
P. O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 4 -

(this to compensate plaintiff for the value of the trailer home, the stock, the piano, the retirement plan of Defendant and the plaintiff's inherited property invested in the trailer court and construction business of the parties). Thereafter all remaining proceeds together with interest shall be disbursed one-half to plaintiff and one-half to Defendant.

5. It is Ordered that the parties hereto are allowed the 30 days from date of the Memorandum Decision, May 27, 1983, to, by their mutual agreement:

a. Appoint a real estate broker or sales agent of their own choosing to act in place of Gary Bywater in selling and distributing said property.

b. To agree to the purchase by either party of any part or all of the assets under the guidelines suggested above by the court or such other terms as the parties can mutually agree upon.

c. Division in kind of all such remaining assets.

6. It is Ordered that each party is to bear his own costs and attorneys fees herein.

7. It is Ordered that the prior temporary order of the court

CERTIFICATE OF MAILING

I hereby certify that I mailed 4 true and correct  
copies, postage prepaid, of the foregoing REPLY BRIEF

to:

Jack H. Molgard

Attorney for Defendant/Appellee

102 South 100 West

P.O. Box 461

Brigham City, Utah 84302

on this 20 day of Feb, 1985.

